

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MAY 31, 2005

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
VICTORIA SELVA
DAWN SLOSSON

ABSENT: NONE

ALSO PRESENT: JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:02 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by SELVA seconded by SLOSSON to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by GALLAGHER seconded by SLOSSON to approve the meeting minutes of May 10, 2005 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Antonio Cavaliere Permanent Parcel No. 08-35-300-006 08-35-300-007	Section 10.0323(A)(9)(a)
(6) PAC Homes Permanent Parcel No. 08-22-127-015	Section 10.0704(B)(2)

5. VARIANCE FROM THE PROVISION OF THE FENCE ORDINANCE;
Permission to vary Section 10.0323(A)(9)(a)-Request allowance to calculate a mezzanine (for storage) as a basement using the provisions of Section 10.0323(A)(9)(a)
Located on East side of Card Road, approx. 1/4 mile North of Hall Road; Section 35; Antonio Cavaliere, Petitioner; Permanent Parcel Nos. 08-35-300-006 & 08-35-300-007.

Chairman FLORENCE read the findings and recommendations of May 26, 2005. They are as follows:

The petitioner is requesting allowance to calculate the mezzanine of his proposed office building as basement under the terms of the zoning ordinance. The proposed office building contains 1 floor of 28,680 sq. ft. plus a mezzanine of 15,600 sq. ft.

The petitioner has indicated that the property is located in a floor plain area and adjacent to the Clinton River. He continues that a basement for this building would be unfeasible and would pose significant difficulty in its construction and future maintenance. His proposal continues that he wishes to build a mezzanine to use in place of the basement.

For the Board's reference, we are herewith repeating section 10.0323(A)(9)a which outlines the provisions upon which the floor area of a basement determines how the parking spaces are to be calculated.

Section 10.0323A9a

9. *Exception.*

a. *Use of basements in office buildings. If the basement of an office building is used exclusively as a service area for the levels above grade then the basement qualifies for special exception as noted in subsection 10.0323 4.a.--c. To be considered as a service area, the uses of the basement shall be limited to the*

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following or similar uses as determined by the Planning Commission: storage area, filing rooms, meeting rooms, library, restrooms, employee lounge/break room, and utility rooms. Under no circumstances shall any rooms or areas be set aside in the basement for permanent work stations or private offices for employees or tenants or to provide direct service to the general public, such as waiting rooms, treatment rooms or similar activities. To qualify for this special exception the owner shall submit a floor plan for the basement area together with the site plan that describes in detail the proposed uses for the basement area together with the site plan that describes in detail the proposed uses for the basement. The Building Official shall review the floor plan and make a report to the Planning Commission as to the proposed use of said basement. The basement must be kept as a service area for the life of the building and further a document to this effect shall be recorded with the County Register of Deeds.

On September 3, 2004, the petitioner submitted a site plan for the Waterstone Office Building on the site as noted above. The issue of determining the calculation of the parking based upon the requirements of the zoning ordinance has been reviewed since that time both by the administration and by an application to your Honorable Body for determination of the required amount of parking. The consultant is of the opinion that the ordinance as written is clear in indicating that the parking for the basement is calculated at one space per 600 sq. ft. based upon the provisions of Section 10.0323 A 9 a.

Since the ordinance has not differentiated as to where storage is to be provided it is a reasonable request of the petitioner, based upon the petitioner's statement that a basement is not feasible, that the mezzanine could be counted as storage area, once again in accordance with the provisions of Section 10.0323 A 9 a, if that is the intention of the petitioner.

RECOMMENDATION:

It is recommended that the petitioner be allowed to calculate the parking for the mezzanine for the Waterstone Building as storage providing 1 space for each 600 sq. ft. rather than 1 space for each 150 sq. ft. following the provision of section 10.0323A9a.

It is further recommended that the approval be subject to the following conditions:

- The floor plan for the mezzanine shall be perpetually kept as a service area with uses limited to storage areas, filing rooms, meeting rooms, restrooms, employee lounge/break room or utility room.
- The floor plan for the use of the mezzanine shall be submitted to the Planning Commission for approval as part of the site plan review and made part of the record of the Planning Commission file based on the Zoning Board of Appeals approval.
- Under no circumstances shall any rooms or areas of the mezzanine be set aside for work stations or private offices for employees or tenants.

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- Under no circumstances shall any rooms or areas of the mezzanine be used for waiting room, treatment rooms or any other purpose open to the general public.
- The building in question shall not contain a basement.
- The conditions of this approval by the Zoning Board of Appeals shall be recorded with the County Register of Deeds.

The following letter of explanation was submitted by the petitioner dated May 16, 2005 as follows:

“Petitioner is proposing to build an office building of the east side of Card Road north of M-59. The property is located in a flood zone and very close to the Clinton River on the east side of the property. A variance is being requested to allow a second floor mezzanine for the building to be treated as a basement. In this particular instance a basement which would be permissible for this building would pose significant difficulty in construction and future maintenance because of the flood zone and river situation”

Antonio Cavaliere, petitioner, was in attendance and stated the proposed building is situated right next to the Clinton River and should a basement be constructed it poses significant problems should the Clinton River flood.

Chairman FLORENCE asked if he had any problems with the recommended conditions.

Antonio Cavaliere stated he had no problems.

Public Portion: None

MOTION by SLOSSON seconded by POPOVSKI to close the public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0323(A)(9)(a)-Request allowance to calculate a mezzanine (for storage) as a basement using the provisions of Section 10.0323(A)(9)(a) Located on East side of Card Road, approx. 1/4 mile North of Hall Road; Section 35;

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Antonio Cavaliere, Petitioner; Permanent Parcel Nos. 08-35-300-006 & 08-35-300-007.
The variance was granted based upon the following conditions:

- **The floor plan for the mezzanine shall be perpetually kept as a service area with uses limited to storage areas, filing rooms, meeting rooms, restrooms, employee lounge/break room or utility room.**
- **The floor plan for the use of the mezzanine shall be submitted to the Planning Commission for approval as part of the site plan review and made part of the record of the Planning Commission file based on the Zoning Board of Appeals approval.**
- **Under no circumstances shall any rooms or areas of the mezzanine be set aside for work stations or private offices for employees or tenants.**
- **Under no circumstances shall any rooms or areas of the mezzanine be used for waiting room, treatment rooms or any other purpose open to the general public.**
- **The building in question shall not contain a basement.**
- **The conditions of this approval by the Zoning Board of Appeals shall be recorded with the County Register of Deeds.**

MOTION carried.

6. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary section:10.0704B2 Requesting permission to allow a residence to remain with a height of 27' rather than the 25' allowed by the ordinance. Located on East side of Nesting Ridge Drive, backing to 23 Mile Road. (approx. ¼ mile east of Heydenreich Road); Secton 22; PAC Homes & Associates, Petitioner. Permanent Parcel No. 08-22-127-015

Chairman FLORENCE read the findings and recommendations of May 26, 2005. They are as follows:

The petitioner is requesting a variance to allow a house to remain as constructed. The house, however, is 2' taller than allowed by the zoning ordinance. A review of the files created for the development of this site indicates that plans have been changed by the builder after the original approval.

A stop work order was placed on the project by the Building Department on May 13, 2005.

A letter from the petitioner indicates that the petitioner was advised that the sewer lead was too high causing the house to be taller than approved by the Building Department via the plan submitted by the petitioner.

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Communications received from the departments include the following:

- The Building Department indicates that the original building plans were approved showing the house at a height of 24'11". The Building Department measurement as of May 19 indicates the house is 27' in height. Once again, the petitioner advised the Building Department that the basement contractor was forced to raise the house because of the sewer system was installed too high.
- Spalding DeDecker & Associates, Macomb Township Engineer, indicated that a field investigation involving excavation to uncover the sewer lead at the property line made on May 21, 2005, verified that the sewer lead was installed per the approved engineering plans. The field survey also verified that the builder extended the sewer lead from the road to the house with a steeper slope than required. Had the lead been installed at the minimum slope, the floor could have been constructed at the proper height. The engineers have concluded that the elevations of the sewer lead did not cause the house to be raised as stated in the application.

Further review of the architectural plans found that the basement walls were installed at a height of 9' instead of the standard of 7'10". It appeared in the review that the basement was excavated for a standard wall but constructed 1'2" higher.

- The Water and Sewer Department's review conducted in concert with the Engineer's review, found that the first floor elevation was shot at 608.21 which is 1.44' above the approved site plan elevation of 606.77.
- The additional .6' of building height was apparently accounted for by increasing the ceiling heights within the structure.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the height requirement did not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirements which are evidence that the proper height requirements are not unreasonable.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the height requirement. As a result the other property owners do not have the opportunity to make use of 2' additional height.

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the residence height from being maintained at 25'. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to increasing the height by approximately 9%.

The following letter of explanation was submitted by the petitioner dated May 18, 2005 as follows:

"On the day of May 13th, 2005 I was told my home is 2 feet higher than the 25 foot height restriction. I had no idea that I was above the restriction. When I called my basement company (CRS Enterprises) I was told that the sewer lead was to high and they had to dig less than normal. I did not see or hear about this till now. The basement was poured in the winter. If I knew this was in effect I could have lowered my basement walls by a foot and also my first floor from 9 foot to 8 foot. This home is sold and the customers' home is also sold. They have to be in within 90 days (August 15th). Could I please get a variance due to this problem. There has been many inspections up to this date and this could have been fixed along time ago. The only thing left to do is to cut the roof down which will be costly and very ugly."

Letters were requested from the Water/Sewer Department, the Township Engineers, Spalding DeDecker and Associates, and the Building Department and their comments are as follows:

Letter dated 5/23/2005 from Water/Sewer Department-"The Department has reviewed the variance request dated May 19, 2005. Records filed in our office for this parcel indicated the sanitary sewer and water services were installed and approved on November 29, 2004. The variance request claims the sanitary sewer lead had inadequate depth to service the proposed home. On May 20, 2005, Spalding DeDecker (Township Engineer) was ordered by our office to conduct grade elevations of the existing home. It was found that the brick ledge grades were within tolerance. The first floor elevation was shot at 608.77. ON May 21, 2005, our office conducted an onsite evaluation by excavating the sanitary sewer lead at the tap located at the front right of way line. Top of pipe elevation at the basement was shot at 597.77, which indicates nearly 2 ft of fall from the building to the front right of way line. Further investigation found the sewer lead at the right of way line (installed by development) to be within tolerance of the approved engineering plans. It si the opinion of this Department that the sewer lead was at proper depths to build a standard home in Macomb Township. Based on the criterion submitted, the Department recommends the Macomb Township Zoning Board of Appeals to deny this variance request."

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Letter dated May 23, 2005 from Spalding DeDecker and Associates-“We have reviewed the variance request for the above referenced lot and offer the following comments relative to the request.

On October 22, 2005 our office reviewed and approved a plot plan for this lot with a first floor elevation of 606.77’ and finished grade elevations of 605.10’ west and 604.6’ east. These elevations match the master grading plan for the subdivision which was approved by our office on January 16, 2003. On February 10, 2005 our office reviewed and approved a preliminary certificate of grade which shows the finished grade of the house to be within the Township’s allowable 0.2’ tolerance of the approved elevation.

As part of our review of this variance request and at the request of the Water & Sewer Department, we have re-verified the finished grade elevations and found that they are still within the allowable tolerance of the approved elevations. However, we discovered the first floor elevation to be 608.21’ which is approximately 1.44’ above the approved elevation. The reason for this change, as stated by the applicant, was due to the elevation of the sanitary sewer lead left by the developer. The Water & Sewer Department has field investigated the matter and verified that the lead was installed per the approved engineering plans. They were also able to verify that the builder extended the sewer lead from the road to the house with a steeper slope than required. If the lead had been installed at minimum slope the basement floor could have been constructed approximately 1.5’ lower than actually constructed. Therefore, the elevation of the sewer lead didn’t cause the house to be raised as stated in the application.

Our review of the architectural plans for the house found the height of the basement walls to be dimensioned as 9’ instead of the standard 7’ 10”. However, a subsequent plot plan submittal by the builder to the Building Department shows the basement wall height to be the standard 7’ 10”. It appears that the basement was excavated for a standard 7’ 10” wall height while the basement walls were constructed according to the architectural plans at 9’ high. This would explain the approximate 1.44’ difference between proposed and existing first floor elevations which in turn partially explains the roof being higher than approved.

Based our review of the information available for this lot, we recommend that the Macomb Township Zoning Board of Appeals deny the request for variance due to the lack of hardship. It was the builder’s responsibility to construct the house according to the plans approved by the Township or obtain separate approvals for any changes required during construction. We have found no physical feature associated with this house which would require it to be altered from the approved plan.

If you have any questions regarding this matter, please contact our office at your convenience.”

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Letter dated May 19, 2005 from the Building Department-“Inspector Tom Moilanen measured the height of the building and has determined by actual measurement that the house is 27 feet in height. (Not 28 feet 3 inches).

Builder Paul Cappuso said his basement contractor raised the house because of the sewer system being high.

Building was determined to be too tall when the building inspector was called to do a rough building inspection.

Building plans approved show the house at a height of 24 feet 11 inches.”

Paul Cappuso, petitioner, was in attendance and indicated that he did not change anything from the approved plans. He also noted that the subdivision was located in a very low part of the Township. The house being built too high was in error of the wall company and wishes that it would have been caught earlier to eliminate this hassle.

Furthermore, the house is already sold and ready for drywall. We are now faced with a stop work order and have no other suggestions other than to chop the roof. It’s only the peak of the roof at the hip and not the entire roof line which exceeds the height requirement.

Member GALLAGHER stated this is a repeat from a prior request that had been considered by this board.

Member SELVA held discussion on the height of the basement wall and the depth of the hole in which the basement walls were to be poured.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by SELVA to deny the variance request of Section 10.0704(B)(2)-Request permission to allow a residence to remain with a height of 27 feet rather than 25 feet allowed by the ordinance; Located on the east side of Nesting Ridge Drive, basing to 23 Mile Road (approximately ¼ mile east of Heydenreich Road); Section 22; PAC Homes and Associates, Petitioner. Permanent Parcel No. 08-22-127-015. The variance was denied based upon the comments made within the letters submitted by Spalding DeDecker and Associates, Building Department, Water/Sewer Department, and the Planning Consultants indicating that there is no practical difficulty. The builder made a mistake and it is his

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responsibility to correct the problem. This body is here to give relief should the Township Ordinances change during the course of the construction of the home. In addition the request would give a 9% height advantage not given to any other homeowner. There was adequate time during the construction of a home from constructing a basement to framing the house that these errors could be caught. There should be a foreman of adequate caliber to catch any errors and obviously there was not one.

Paul Cappuso stated they went through several inspections and city officials. The house is at rough plumbing, rough electrical and rough heating and we get one rough building and we get one rejection. They come out a second time and they catch it. I've had seven inspections on the home by building officials and it took six inspections to catch it. They all know the codes, they are all the same inspectors. I'm not blaming nobody, I'm just saying that its not just me but it even took a time for the inspectors to catch the error. We were getting to pour the concrete and the boards were off to walk up to get into the house and he could not climb into the house because it was too tall. If I would have had the planks up there he probably would've walked up it like every other inspector did without questioning it. The situation with the subdivision is that it is a real low subdivision and every lot I was getting use to the basement walls sticking out of the ground.

Member GALLAGHER stated that when the inspectors are on the job inspecting a home, he believes them to be looking at the quality of the construction. That plan was approved at an approved height. They are not going to go over and look at something that has already been approved. If that house would have been built according to the plan it would have been the right height. What they are doing is looking at the structural integrity of the house when you are building. At this particular time when you are doing rough inspections, they are not looking at the height, because that was approved before.

Paul Cappuso stated there are some inspectors that know the ordinances and they go out of their means just to check to keep up. I was not trying to cheat, because it cost me money. So obviously I now need to change the roof line.

MOTION carried.

13. OLD BUSINESS

None.

14. NEW BUSINESS

Jerome R. Schmeiser, Planning Consultant, stated the next regular meeting is scheduled for July 12, 2005.

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15. PLANNING CONSULTANTS COMMENTS

16. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE

MOTION by SELVA seconded by SLOSSON to file and receive all correspondence.

MOTION carried.

ADJOURNMENT

MOTION by GALLAGHER seconded by POPOVSKI to adjourn the meeting at 7:38 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK